

ASSEMBLY BILL

No. 1643

Introduced by Assembly Member Ridley-Thomas

February 21, 2003

An act to amend Sections 2750.5, 3357, 4157, and 5705 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1643, as introduced, Ridley-Thomas. Employment.

Under existing law, there is a rebuttable presumption that a worker is an employee, and not an independent contractor for various purposes in employment law including rules governing employees and workers' compensation, unless satisfactory proof, as specified, of independent contractor status exists.

This bill would establish a 3rd category of workers, contract service providers, if specified criteria are satisfied. The bill would make other changes in the Labor Code to provide for this 3rd category.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2750.5 of the Labor Code is amended
2 to read:
3 2750.5. (a) There is a rebuttable presumption affecting the
4 burden of proof that a worker performing services for which a
5 license is required pursuant to Chapter 9 (commencing with
6 Section 7000) of Division 3 of the Business and Professions Code,
7 or who is performing such services for a person who is required to

1 obtain such a license is an employee rather than an independent
2 contractor *or contract service provider*. ~~Proof~~

3 (b) *Proof of independent contractor status includes satisfactory*
4 *proof of these factors:*

5 ~~(a)~~

6 (1) That the individual has the right to control and discretion as
7 to the manner of performance of the contract for services in that
8 the result of the work and not the means by which it is
9 accomplished is the primary factor bargained for.

10 ~~(b)~~

11 (2) That the individual is customarily engaged in an
12 independently established business.

13 ~~(c)~~

14 (3) That the individual's independent contractor status is bona
15 fide and not a subterfuge to avoid employee status. A bona fide
16 independent contractor status is further evidenced by the presence
17 of cumulative factors such as substantial investment other than
18 personal services in the business, holding out to be in business for
19 oneself, bargaining for a contract to complete a specific project for
20 compensation by project rather than by time, control over the time
21 and place the work is performed, supplying the tools or
22 instrumentalities used in the work other than tools and
23 instrumentalities normally and customarily provided by
24 employees, hiring employees, performing work that is not
25 ordinarily in the course of the principal's work, performing work
26 that requires a particular skill, holding a license pursuant to the
27 Business and Professions Code, the intent by the parties that the
28 work relationship is of an independent contractor status, or that the
29 relationship is not severable or terminable at will by the principal
30 but gives rise to an action for breach of contract.

31 In addition to the factors contained in ~~subdivisions (a), (b), and~~
32 ~~(c)~~ *paragraphs (1), (2), and (3)*, any person performing any
33 function or activity for which a license is required pursuant to
34 Chapter 9 (commencing with Section 7000) of Division 3 of the
35 Business and Professions Code shall hold a valid contractors'
36 license as a condition of having independent contractor status.

37 (c) *Proof of contract service provider status includes*
38 *satisfactory proof of these factors:*

39 (1) *That the contract service provider is a business satisfying*
40 *one of the following:*

1 (A) *The business is a certified California small business, as*
2 *defined in subparagraph (1) of subdivision (d) of Section 14837 of*
3 *the Government Code.*

4 (B) *The business possesses a valid California business or*
5 *professional license.*

6 (2) *That the contract service provider has insurance coverage*
7 *self-paid by the contractor, markets to multiple potential*
8 *customers, bills multiple clients, has investments in business*
9 *assets, such as equipment and tools, works under a negotiated*
10 *written contract, or has a recurring monthly retainer agreement*
11 *for general work, and retains control over the time and place the*
12 *work is performed for a customer.*

13 (d) For purposes of workers' compensation law, this
14 presumption is a supplement to the existing statutory definitions
15 of employee~~and~~, independent contractor, *and contract service*
16 *provider*; and is not intended to lessen the coverage of employees
17 under Division 4 and Division 5.

18 SEC. 2. Section 3357 of the Labor Code is amended to read:
19 3357. Any person rendering service for another, other than as
20 an independent contractor *or contract service provider*, or unless
21 expressly excluded herein, is presumed to be an employee.

22 SEC. 3. Section 4157 of the Labor Code is amended to read:
23 4157. Where any employer has made an election pursuant to
24 this chapter to include under the compensation provisions of this
25 division an independent contractor *or contract service provider*
26 engaged in vending, selling, offering for sale, or delivering
27 directly to the public any newspaper, magazine, or periodical, the
28 status of such person as an independent contractor for all other
29 purposes shall not be affected by such election.

30 SEC. 4. Section 5705 of the Labor Code is amended to read:
31 5705. The burden of proof rests upon the party or lien
32 claimant holding the affirmative of the issue. The following are
33 affirmative defenses, and the burden of proof rests upon the
34 employer to establish them:

35 (a) That an injured person claiming to be an employee was an
36 independent contractor *or contract service provider* or otherwise
37 excluded from the protection of this division where there is proof
38 that the injured person was at the time of his or her injury actually
39 performing service for the alleged employer.

40 (b) Intoxication of an employee causing his or her injury.

- 1 (c) Willful misconduct of an employee causing his or her
- 2 injury.
- 3 (d) Aggravation of disability by unreasonable conduct of the
- 4 employee.
- 5 (e) Prejudice to the employer by failure of the employee to give
- 6 notice, as required by Sections 5400 and 5401.

